

SERVICE DATE – MARCH 1, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42120

CARGILL, INCORPORATED v. BNSF RAILWAY COMPANY

Decided: March 1, 2012

BNSF Railway Company (BNSF) has petitioned the Board to order the simultaneous filing of final briefs, and it requests that the briefs be limited to no more than 30 pages and include no attachments, exhibits, or new evidence. BNSF points out that this is a complex case of first impression and that requests for final briefs have been consistently granted not only in rate cases, but in other complex proceedings as well.

Cargill, Incorporated (Cargill), filed a reply. Cargill contends that final briefs are not necessary in light of the extensive record that has been developed. Cargill also asserts that BNSF's briefing schedule will needlessly slow down the already delayed resolution of the case and unnecessarily increase litigation costs. If the Board finds that additional input would be helpful, Cargill requests that the particular areas for such input be identified, an expedited 15-day briefing schedule be adopted, and briefs be limited to 15 pages in length.

BNSF's petition for the simultaneous filing of final briefs will be granted. There are questions the Board would like the parties to brief further. Parties may address any issues they deem relevant. At a minimum, however, the parties are directed to address the following questions in their submissions:

1. Assuming that a fuel surcharge program need not produce revenues that match precisely the carrier's incremental fuel costs to be reasonable, what standard should the Board use, and what factor(s) should it consider, in determining what level of excess recovery would demonstrate an unreasonable practice?
2. Putting aside the issue of whether a fuel surcharge program was reasonable when designed, at what point in time would a carrier's over recovery of incremental fuel costs become an unreasonable practice?

Simultaneously filed final briefs will be due by April 2, 2012. Such briefs may not exceed 30 pages in length and may not include attachments, exhibits, or new evidence, but may refer to exhibits or other materials already in the record.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's petition for the simultaneous filing of final briefs is granted as provided above.

2. This decision is effective on the service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.